

Protestor's arrest and conviction for disobeying a police order violated Article 11

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The European Court's First Section has unanimously held that a protestor's arrest and conviction for failing to obey a police order violated his Article 11 right to freedom of assembly, despite the demonstration being unlawful. The First Section's opinion in [*Mammadov v. Azerbaijan*](#) tackled the difficult issue of how police officers are supposed to respond to unlawful demonstrations, and whether protestors who participate in such demonstrations, but remain peaceful, may still be arrested.

In early June 2011, an opposition group in Baku, Azerbaijan, sent a request to city officials about holding a demonstration in a city-centre square on 19 June 2011, calling for democratic reforms, fair elections and release of prisoners currently in custody for exercising their freedom of assembly. Under Azerbaijan's freedom of assembly law, advance notice must be given for the holding of demonstrations. City officials refused to authorise the demonstration in the square, but proposed a different location "on the outskirts of Baku". Despite the refusal, the group decided to hold the planned demonstration in a city square, and Gafgaz Mammadov, a 62-year-old Baku resident, also decided to join the demonstration.

The demonstration was peaceful, but shortly after it began, police officers informed the crowd the demonstration was unauthorised, and that they should disperse. A police officer later testified that Mammadov "continued his actions, disobeying our requests," and was arrested. He was brought to a police station, questioned, and charged with failing to comply with a police order. The following day, Mammadov was convicted by a district court of "deliberate failure to comply with the lawful order of a police officer" (under Azerbaijan's administrative offences code, article 301). He was sentenced to five days' detention, which was later upheld by the Baku court of appeal.

Mammadov made an application to the European Court, claiming his arrest and conviction violated his right to freedom of assembly. First, the Court reviewed the police order for the crowd to disperse, and concluded it was disproportionate: (a) there was no evidence the demonstration, despite being unlawful, "posed a high level of disruption of public order"; and (b) there was no evidence it would not have been difficult for the police to instead "contain or redirect" protestors, and "control the situation otherwise."

The Court then reviewed Mammadov's arrest. The Court found that although there was a police demand "addressed to the crowd at large", there was no evidence of any police order being "specifically addressed" to Mammadov himself. Further, there was no evidence of "who had given such an order", "when", or "its exact wording." It followed, according to the Court, that the police invoking the offence of disobeying a police order as a ground for arrest was "unsubstantiated" and "arbitrary." The Court held that Mammadov was "in fact" arrested for participating in an unauthorised demonstration. The arrest violated Article 11 as there was no evidence that Mammadov's "specific actions" during the demonstration "necessitated his arrest," and no evidence of him committing "any reprehensible offence."

As to Mammadov's conviction and sentencing, the Court held that the "arbitrary" reference to the disobeying-a-police-order offence allowed the domestic courts to impose a sentence of five days' detention. But, as the Court had found that Mammadov was "in fact" arrested for participating in an unauthorised demonstration, under Azerbaijan law, there was "no penalty

in the form of deprivation of liberty” for participating in an unauthorised demonstration. As such, the Court found that a penalty had been imposed on Mammadov which was “not applicable to the action held against him.” The Court concluded that Mammadov’s arrest, conviction, and the sanction imposed, all violated his Article 11 right to freedom of assembly. The Court held that the arrest and conviction had a “serious potential” to have a chilling effect on the public from attending demonstrations, and “participating in open political debate” more generally.

Comment

The First Section, under the presidency of Judge András Sajó, seems to be quite conscious of the chilling effect which arises when police officers arrest non-violent protestors, and when domestic courts then impose convictions for alleged disobeying of police orders. This seems to explain the remarkably strict standard of scrutiny the Court applied in reviewing the police’s actions and domestic courts’ reasoning (including the application of domestic law).

Moreover, the *Mammadov* opinion reaffirms the important principle that even where an individual seemingly commits an offence, such as disobeying a police order, Article 11 scrutiny does not end there. Domestic courts must review, using strict Article 11 scrutiny, whether the police were justified in issuing an order, and whether such an order was in fact issued. The evidentiary burden is always on the government and the police, and where insufficient evidence is produced, Article 11 requires the courts to err on the side of the protestor.

Finally, while governments can, consistent with Article 11, impose a system of prior-authorisation for the holding of demonstrations, the police response to unlawful demonstrations must still take account of a number of factors, including: (a) whether the demonstration remained peaceful, and (b) whether “containing or redirecting” protestors, instead of arrest, is sufficient. This reflects the overarching principle under Article 11 that the police must “show a certain degree of tolerance towards peaceful gatherings,” even if unauthorised.